

**STATE OF TENNESSEE**

OFFICE OF THE  
ATTORNEY GENERAL  
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April 21, 2004

Opinion No. 04-071

Preparation and Use of Forms By Courts; Practice of Law

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**QUESTION**

Is it the unauthorized practice of law for the Court to develop form petitions and orders and to direct non-attorney members of the Circuit Court Clerk's office to make the petitions available for use by *pro se* litigants seeking to have their driving privileges restored?

**OPINION**

No. Because trial courts of this State have the inherent authority to adopt supplementary local rules of practice and to otherwise institute practices which are not inconsistent with or in conflict with the rules prescribed by the Supreme Court under Tenn. Code Ann. § 16-3-407 or other applicable law, the Court may develop form petitions and direct non-attorney members of the Circuit Court Clerk's office to make these form petitions available for use by *pro se* litigants seeking to have their driving privileges restored as long as none of the conduct is performed "in a representative capacity" for *pro se* litigants. Given that the court is in the business of issuing orders, it does not constitute the unauthorized practice of law for non-attorney employees of the court or the Clerk's office to fill in form orders for the court to review and sign.

**ANALYSIS**

The court in Anderson County uses form petitions and orders relating to motor vehicle habitual offenders seeking to have driving privileges restored under Tenn. Code Ann. § 55-10-615(b). Although the facts are not completely clear from the request for an opinion, it appears that the Court (and not non-attorney employees of the Clerk's office) prepared the actual forms. It also appears that the Clerk, at the Court's direction, makes the form petitions available to *pro se* petitioners who fill out and submit the forms themselves. If the petition is granted, the Clerk fills in petitioner-specific information on a court-prepared form order and gives it to the Court for review and signature. After that, the non-attorney clerk formally enters the order on the court's minutes.

The “practice of law”<sup>1</sup> has been defined in Tenn. Code Ann. § 23-3-101(2) to include “the drawing of papers, pleadings or documents . . . in connection with proceedings pending or prospective before any court. . . .” The “practice of law” definition also requires that the conduct be “in a representative capacity.” Tenn. Code Ann. § 23-3-101(2). The Tennessee Supreme Court has previously determined that “the acts enumerated in the definitions of ‘law business’ and ‘practice of law’ contained within Tenn. Code Ann. § 23-3-101, if performed by a non-attorney constitute the unauthorized practice of law only if the doing of those acts requires the ‘professional judgment of a lawyer.’” *In re Petition of Burson*, 909 S.W.2d 768, 776 (Tenn. 1995). The Court in *Burson* stated that its interpretations of the state statutes is consistent with the purpose of regulation of the practice of law which is to “serve the public right to protection against unlearned and unskilled advice in matters relating to the science of law.” *In re Petition of Burson*, 909 S.W.2d 768, 777 (Tenn. 1995) (quoting *Application of New Jersey Soc. of Certified Pub. Accountants*, 507 A.2d 711, 714 (N.J. 1986)).

The Tennessee Legislature has granted courts in this state the authority to adopt additional or supplementary rules of practice and procedure so long as these rules do not conflict or become inconsistent with the rules prescribed by the Tennessee Supreme Court. Tenn. Code Ann. § 16-3-407. The Tennessee Court of Appeals has ruled consistent with the statute that trial courts in Tennessee can make and implement local rules of practice as long as they do not conflict with substantive state rules and laws. *Brown v. Daly*, 884 S.W.2d 121 (Tenn.App. 1994); *Richie v. Liberty Cash Grocers, Inc.*, 471 S.W.2d 559 (Tenn.App. 1971). Pursuant to this rule-making authority,<sup>2</sup> local courts can develop practice forms for use in their respective jurisdiction.<sup>3</sup> Additionally, courts have the inherent authority to regulate practice before it without specific recourse to their rule-making authority as long as the practice is consistent with the rules promulgated by the Tennessee Supreme Courts and applicable law.<sup>4</sup> Therefore, the Court may develop these form petitions and direct non-attorney members of the Circuit Court Clerk’s office to make them available for use by persons seeking to have their driving privileges restored under Tenn. Code Ann. § 55-10-615(b) as long as none of the conduct is in a representative capacity for litigants.

Because courts are in the business of issuing orders, it does not constitute the unauthorized practice of law for non-attorney employees of the court or the Clerk’s office to fill in form orders for

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<sup>1</sup>No “valuable consideration” is exchanged here. Accordingly, none of the conduct in question constitutes “law business” within the meaning of Tenn. Code Ann. § 23-3-101(1).

<sup>2</sup>The Seventh Judicial District, Anderson County, Tennessee Local Rules of Court appear to be silent on the subject of form petitions and orders relating to the reinstatement of driving privileges.

<sup>3</sup>This Office has addressed similar questions in a previously issued opinion. See Op. Tenn. Atty. Gen. 01-071 (May 7, 2001) (preparation of forms by non-attorney member of Clerk and Master’s Office would constitute “practice of law;” however, trial courts of this state have the authority to develop practice forms for use in their respective jurisdictions and make them available for use by the court clerk’s office).

<sup>4</sup>“Trial courts possess inherent, common-law authority to control their dockets and the proceedings in their courts.” *Hodge v. Attorney General*, 43 S.W.3d 918, 921 (Tenn.App. 2000).

the court to review and enter. This is just performing a legitimate assignment for the court and is not done in a representative capacity on behalf of a litigant. Given that the orders are apparently filled out by non-attorney employees and given directly to the Court, this practice, therefore, does not constitute the unauthorized practice of law.

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